Smith Ry. Co. v. *Chapman,* 39 Ark. 463, 43 Am. Rep. 280; *Swett* v. *Cutts,* 50 N. H. 439, 9 Am. Rep. 276. It has been suggested that any rule on this question should make a distinction between city and rural property. See article on SURFACE WATERS in 6 MICH. L. REV. 448.

WATERS—RIGHT TO REMOVE ICE.—In an action to enjoin defendant from taking ice formed on a mill-pond, it was *held* that the title to the ice is in the owner of the soil, and not in the owner of the right to flow the land for creating water power. *Valentino* v. *Schantz et al.* (N. Y. 1915), 109 N. E. 866.

It seems to be the well-established rule that the ice formed in waters where the bed is in private ownership is the property of the owner of the soil over which it is formed. *Washington Ice Co.* v. *Shortall,* 101 Ill. 46; *State* v. *Pottmeyer,* 33 Ind. 402; *Marsh* v. *McNider,* 88 Iowa 390. This rule has been based on the theory that the ice, by being attached to the soil, became part of the realty on the theory of accretion, *Washington Ice Co.* v. *Shortall,* supra, at p. 55, and also on the principle that the owner has the same rights in the ice as in the water, that is, "the right to take the ice from the water resting upon his land." *Stevens* v. *Kelley,* 78 Me. 445, 451. It would seem that different results would flow from these theories; the first giving title in the ice, the second giving the right to a reasonable use of the ice. Where riparian owners or their predecessors in title have granted the right to flow their land by means of a dam to raise a head of water for propelling machinery, the owner of the right of flowage does not, by the prevailing rule, acquire any right to the ice which may form on the pond over the land of the riparian owners. *Julien* v. *Woodsmall,* 82 Ind. 568; *Bigelow* v. *Shaw,* 65 Mich. 341. The owner of the land flowed may use the ice adjoining his land to any extent which does not decrease the flow of water below that necessary to successfully fulfill the needs of the owner of the dam. *Eidemiller Ice Co.* v. *Guthrie,* 42 Neb. 238; *Reyson* v. *Roate,* 92 Wis. 543; *Stevens* v. *Kelley,* supra; *Searle* v. *Gardner,* 10 Sadler (Pa.) 163; *Beachwood Ice Co.* v. *American Ice Co.,* 176 Fed. 435; *Paine* v. *Woods,* 108 Mass. 160, 173; *Abbott* v. *Cremer,* 118 Wis. 377; *Cummings* v. *Barrett,* 10 Cush. 186, (semble). This rule rests on the theory that the owner of the servient estate can make any use of it not inconsistent with the easement of flowage. *Brookville & Metamora Hydraulic Co.* v. *Butler,* 91 Ind. 134, 138. The courts of New York and Connecticut formerly took the view that the owner of the mill privileges had a right to all the ice formed on the pond. *Myer* v. *Whitaker,* 5 Abb. N. C. (N. Y.) 172; *Mill River Woolen Mfg. Co.* v. *Smith,* 34 Conn. 462. These cases, however, have been questioned; *Dodge* v. *Berry,* 26 Hun (N. Y.) 246; *Howe* v. *Andrews,* 62 Conn. 398. It would seem that the principal case, being from the Court of Appeals, clearly sets forth the New York doctrine on this question, and adopts the rule which is at present universally accepted in this country.

WILLS—EFFECT OF PARTIAL CANCELLATION ON THE RESIDUE OF ESTATE.—Where the sixth paragraph and part of the tenth paragraph (the latter being the residuary clause) had been cut and removed from the will of the testa-